



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/499,693	02/08/2000	Insu Lee	00120/P-4858	1622

7590 02/08/2005
PERKINS COIE, LLP
P.O. BOX 2168
MENLO PARK, CA 94026

EXAMINER

MITCHELL, GREGORY W

ART UNIT	PAPER NUMBER
----------	--------------

1617

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/499,693

Applicant(s)

LEE ET AL.

Examiner

Gregory W Mitchell

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to the amendments and remarks filed August 06, 2004 and the RCE filed November 03, 2004. Said amendments have been entered. Claims 26, 28, 32-34, 36-38, and 40-42 have been amended. Claims 26-45 are pending and are examined herein.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 06, 2004 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26, 28-29, 34, 36-38, 40-42, and 44-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin (USPN 4061738) and as evidenced by Bhatti et al. (JAOCS, 1990, 67(6), 364-367) and Carughi et al. (GB 2274235).

Martin discloses edible flaxseed oil (Abstract). It is pointed out that an edible oil is a food. Exemplified is an oil that comprises linolenic acid cis-cis to linoleic acid cis-cis in a ratio of 50:15 (Example 7). It is pointed out this ratio of linoleic to linolenic acid is about 0.3. Furthermore, it is pointed out that, as evidenced by Bhatti et al., that the linolenic acid found in flaxseed oil is alpha-linolenic acid (p. 364, first paragraph).

Examiner points out that edible flaxseed oil can, itself, also be a dietary supplement, as evidenced by Carughi et al. (Abstract).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26, 34, 38 and 42 rejected under 35 U.S.C. 103(a) as being unpatentable over Leach (USPN 5612074).

The instant invention is directed toward an unsaturated fatty acid composition comprising flaxseed oil in a food comprising linoleic fatty acid and alpha-linolenic fatty acid in a ratio of 0.05-7.5.

Leach teaches a nutrient fortified food bar. Taught is an uncooked food bar consisting of dry ingredients combined with a mixture of liquid ingredients, wherein the liquid ingredients include at least one vegetable oil containing polyunsaturated linoleic acid and at least one vegetable oil containing alpha-linolenic acid, wherein the linoleic to

Art Unit: 1617

linolenic ratio is 3:1 in the food bar. Flaxseed is recited as an oil for use in the composition. See col. 9, lines 20-col. 16, line 38. The reference lacks an exemplification of flaxseed in the food bar.

It would have been obvious to one of ordinary skill in the art at the time of the invention to exemplify flaxseed oil as the vegetable oil in the food bar of Leach because flaxseed oil is taught as a preferred oil in the instant invention. One would have been motivated to prepare a food bar comprising flaxseed oil because of an expectation of success in preparing a nutrient fortified food bar with the desired linoleic to linolenic ratio, as taught by Leach.

Claims 27, 31, 35, 39 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leach as applied to claims 26, 34, 38 and 42 above, and further in view of both Erasmus et al. (USPN 5656312) and Hunter et al. (USPN 4863753).

Leach is applied as disclosed above. The reference lacks rapeseed oil and perilla oil.

Erasmus et al. Teach a dietary food supplement. Perilla and flaxseed oils are disclosed as combinable oils. See col. 11, line 24-col. 14, line 43.

Hunter et al. teach compositions comprising reduced calorie peanut butter. Perilla oil and rapeseed oil are both disclosed as oils that can be used as fatty acids in the composition. Rapeseed oil is disclosed as a stabilizer for the oil phase of the composition. See col. 6, lines 3-34.

Art Unit: 1617

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the perilla seed oil of Erasmus et al. to the composition of Leach because a) Leach and Erasmus are both directed to food supplements; b) Erasmus teaches that perilla seed oil and flaxseed oil can be in compositions together in a food supplement; c) Leach teaches that the liquid phase of his composition can comprise one or more seed oils containing linolenic acid and Hunter teaches that perilla oil as a source of linolenic acid. Thus, one of ordinary skill in the art would have been motivated to add perilla oil to the composition of Leach because of the expectation of achieving enhanced nutritional benefits.

It would have been obvious to one of ordinary skill in the art at the time of the invention to add the rapeseed oil of Hunter et al. to the composition of the combined references because a) Hunter teaches the combination of rapeseed oil and perilla oil in composition together in a food supplement; and b) Hunter teaches rapeseed oil as providing stability to the oil phase of the composition. Thus, one of ordinary skill in the art would have been motivated to add the rapeseed oil of Hunter et al. to the composition of the combined references because of an expectation of increasing the stability of the composition.

Claims 28, 30, 32, 36, 40, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leach as applied to claims 26, 34, 38, and 42 above, and further in view of Igarashi (USPN 6159507).

Leach is applied as disclosed above. The reference lacks a capsule form of the composition and the preferred ratio.

Igarashi teaches food compositions containing an omega-6/omega-3 unsaturated fatty acid balance modifier. Igarashi teaches that food compositions comprising a ratio of omega-3 fatty acids to omega-6 fatty acids of 1:1 to 1:5 are known. Furthermore, the reference teaches that the normally balance to be inherently maintained in the body of omega-6 to omega-3 fatty acids is 1:5 and preferably 2:4. Capsule forms of the composition are disclosed. See col. 5, line 64-col. 6, line 40; col. 7, lines 1-8.

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Igarashi into the invention of the combined references and obtain a ratio of linoleic to linolenic acid of 0.05-2 because a) the Leach and Igarashi reference are both directed to food products; b) Igarashi teaches that ratios of 1:1 and 1:5 are known to be used in food compositions; and c) Igarashi teaches that the body prefers a ratio of 1:5 for optimum health. Thus, one of ordinary skill in the art would have been motivated to incorporate the ratios of omega-6 to omega-3 fatty acids of Igarashi into the composition of Leach because of an expectation of producing a food bar that maintains the proper physiological balance of omega-6 and omega-3 fatty acids in the body.

It would have been obvious to one of ordinary skill in the art at the time of the invention to teach the food bar of Leach in the form of a capsule because Igarashi that such compositions may be so formulated. One would have been motivated by an

expectation of success in preparing an easily administrable form of nutritional supplement.

Claims 29, 33, 37, 41, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leach, Erasmus et al. and Hunter et al. as applied to claims 26, 27, 31, 34, 35, 38, 39, 42 and 43 above, and further in view of Igarashi (USPN 6159507).

Leach, Erasmus et al. and Hunter et al. apply as disclosed above. The combined references lack the preferred ratios.

Igarashi teaches food compositions containing an omega-6/omega-3 unsaturated fatty acid balance modifier. Igarashi teaches that food compositions comprising a ratio of omega-3 fatty acids to omega-6 fatty acids of 1:1 to 1:5 are known. Furthermore, the reference teaches that the normally balance to be inherently maintained in the body of omega-6 to omega-3 fatty acids is 1:5 and preferably 2:4. See col. 5, line 64-col. 6, line 40; col. 7, lines 1-8.

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Igarashi into the invention of the combined references and obtain a ratio of linoleic to linolenic acid of 0.05-2 because a) the Leach and Igarashi reference are both directed to food products; b) Igarashi teaches that ratios of 1:1 and 1:5 are known to be used in food compositions; and c) Igarashi teaches that the body prefers a ratio of 1:5 for optimum health. Thus, one of ordinary skill in the art would have been motivated to incorporate the ratios of omega-6 to omega-3 fatty acids of Igarashi into the composition of Leach because of an expectation of producing a food

Art Unit: 1617

bar that maintains the proper physiological balance of omega-6 and omega-3 fatty acids in the body.

Response to Amendments and Arguments

Applicant suggests that the claims are amended so as to overcome the instant 35 U.S.C 103 rejections. These arguments are not persuasive because the claims read on a composition comprising flaxseed oil in a food. The primary reference of prior art cited is directed to a food bar wherein flaxseed oil is used. Accordingly, the composition teaches a composition comprising flaxseed oil in a food. Furthermore, the ratios of linoleic to linolenic fatty acids in the food as claimed herein are taught in the prior art. Accordingly, the instant claims remain rejected over Leach, Erasmus et al., Hunter et al. and Igarashi.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W Mitchell whose telephone number is 571-272-2907. The examiner can normally be reached on M-F, 8:30 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gwm



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER